IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1328 of 2007

Selvam .. Petitioner

Vs

1. The Secretary to the Government.,
   Food, Co-operation and Consumer
   Protection Department, Chennai-9.

2. The District Magistrate
   and District Collector,
   Theni District.

3. The Secretary to the Government,
   Food and Consumer Protection
   Department, Govt. of India,
   New Delhi. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban

For Respondents: Mr.N.R.Elango
APP for RR1 & 2
: Mr.P.Kumaresan,ACGSC /R-3

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ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, friend of the detenu by name Subramanian, who was incarcerated at Central Prison, Madurai, by an order dated 12.8.2007 of the second respondent under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Act 7/1980) branding him as a Black Marketeer, seeks a writ of Habeas Corpus to call for the records in connection with the

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order of detention dated 12.8.2007 passed in No.2/2007/CS, to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

2. On 4.8.2007, the police party attached to Civil Supplies CID Unit, Uthamapalayam, conducted vehicle check near Old Police Check Post, Cumbum Mettu Road and intercepted a lorry, which contained 208 bags of rice meant for Public Distribution System, and when the police enquired the detenu and the lorry driver, they confessed that they tried to smuggle the rice to sell it at higher price. The detenu and the lorry driver were arrested and their confession statements, admitting the offence, were recorded and the contraband were seized. On the basis of the confession statements, a case in Crime No.439/2007 under Clause 64 of TNSC (RDCS) Order, 1982 and r/w 7(1)(a)(ii) of the Essential Commodities Act, 1955 was registered on the file of Uthamapalayam Civil Supplies CID Unit. The detenu was produced before the Judicial Magistrate, Uthamapalayam, for judicial custody.

3. The second respondent, taking note of the above ground case, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of Distribution of Essential Commodities to the public, ordered his detention dubbing him as a Black Marketeer.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay on the part of the detaining authority in sending the remarks to the Government.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the case on hand, admittedly, objecting to the order of detention dated 12.8.2007, a representation was made on behalf of the detenu on 29.8.2007, which was received by the Government on 5.9.2007. Remarks were called for from the detaining authority on 6.9.2007. The detaining authority, though received the same on 9.9.2007, called for the parawar remarks from the sponsoring authority only on 19.9.2007, i.e. after a delay of ten days. Even taking note of the intervening holidays, viz. 15.9.2007 and 16.9.2007 (being Saturday and Sunday), there is inordinate delay of eight days on the part of the detaining authority in calling for the parawar remarks from the sponsoring authority, which remained unexplained and is inexcusable. The sponsoring authority sent the parawar remarks on the same day, i.e. on 19.9.2007 and it was sent to the Government on 20.9.2007. On receipt of the remarks on 22.9.2007, the file was circulated on 24.9.2007, on which date, the Under Secretary, Deputy Secretary and

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the Secretary (CF & CP) considered the same. The Secretary (Law) and the Minister concerned dealt with the file on 25.9.2007 and rejected the representation. The rejection letter was prepared and sent to the detenu on 26.9.2007 and served on him on 29.9.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of eight days on the part of the detaining authority in calling for the parawar remarks from the sponsoring authority, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

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   Food, Co-operation and Consumer
   Protection Department, Chennai-9.

2. The District Magistrate
   and District Collector,
   Theni District.

3. The Secretary to the Government,
   Food and Consumer Protection
   Department, Govt. of India,
   New Delhi.

4. The Superintendent
   Central Prison, Madurai.

5. The Joint Secretary to Government
Public (Law and order) Department,
Fort St. George, Chennai-9.

6. The Public Prosecutor,
   High Court, Madras.

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